

Kerala Tourism (Conservation and Preservation of Areas) Act – Concerns Intensify

EQUATIONS

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The Kerala Tourism (Conservation and Preservation of Areas) Amendment Ordinance, 2010 (Kerala Ordinance 2010) was promulgated by the Governor on 12th June 2010. It provided for amending the Kerala Tourism (Conservation and Preservation of Areas) Act, 2005. It proposes substituting the State Tourism Conservation and Preservation Committees formed under the Kerala Tourism Act, 2005 with State Tourism Development Authority (DA) for the conservation, preservation and integrated planned development of the Special Tourism Zones (STZs). A few days later, on 29th June 2010, the Kerala Tourism (Conservation and Preservation of Areas) Amendment, Bill 2010 was placed before the State Legislative Assembly, presumably, in order to ensure that the Kerala Ordinance 2010 promulgated does not cease to operate. In this paper, we have critiqued the Amendment Bill and questioned the transferring of regulatory powers of Local Self Governing Institutions (LSGIs) to a parastatal body like DA. This results in the loss of the democratic exercise of powers by the LSGIs. We have also questioned the Ordinance route adopted by the government. With hardly less than 15 days left for the assembly session to start, the move is intended to exclude dialogue with people and their representatives and thereby evade public scrutiny.

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In EQUATIONS' critique of the Kerala Tourism Act 2005, the prime concerns raised by us were:

- The Kerala Tourism Act 2005 usurps powers and mandates of Local Self Governing Institutions (LSGIs)
- It promotes the enclavisation of tourism through Special tourism Zones (STZ) – a model that is far from sustainable or beneficial to local communities.
- The Kerala Tourism Act 2005 subordinates the general Planning Process to favour tourism related development process that prioritizes and privileges tourism centric development.
- This Kerala Tourism Act 2005, in principle, and in operational ways, aims to re-establish the colonial praxis that State and not the people are competent to engage with matters of development. Given Kerala's history of decentralization and peoples plan processes, this move is retrograde.

The developments related to the Kerala Tourism Ordinance 2010, followed by Kerala Tourism Amendment Bill 2010, have only intensified these concerns.

Why do we oppose Development Authorities?

- **The Tourism Conservation and Preservation Committee constituted under the Kerala Tourism Act 2005 took over significant powers of the LSGIs related to regulation of tourism at the local level.** The DAs that have been proposed to replace the Tourism Committee in the Kerala Tourism Amendment Bill 2010 also clearly bypass the Constitutional mandate and provisions of *Kerala Panchayat Raj Act* of 1994.
- **Article 243 G** and the **Article 243 W** of the Constitution of India delegate the responsibility with respect to preparation of plans for economic development and social justice and implementation of schemes for economic development and social justice to the institutions of local self-governance (LSGIs) namely, the Panchayats and Municipalities respectively (see Note 1). The Tourism industry relies on natural resources and services which fall under the Panchayat jurisdiction. Hence it becomes very important that the local Panchayat

/ Municipality are involved in regulating tourism developments in the local level. **Transferring this regulatory role to a parastatal body implies loss of the democratic exercise of powers by the LSGIs.**

- The trend of shifting the governance of an area from the LSGIs to the DAs is on the rise. In the tourism context the Hampi Development Authority, officially known as Hampi World Heritage Area Management Authority was constituted in 2003 by the Karnataka Government, Kevadia Area Development Authority in Gujarat was constituted in 2005. Chilika and Kolleru Development Authorities also have tourism links. Jammu and Kashmir also has a host of tourism linked Development Authorities.
- **The constitution of DAs also leads to substitution of the general Planning Process** (the General Master Plan of any area formulated under the local Town and Country Planning Act) **to favour tourism related development process that prioritizes and privileges tourism centric developments.** According to the Tourism Amendment Bill 2010, the State Tourism Development Authority will have the authority to modify the development plans of the regions that are declared as STZs. **We believe that tourism development should be only a subset of the general planning processes.** The Master Plan of any area formulated under the local Town and Country Planning Act) has the mandate of overall development of the area and tourism should not dictate the overall development process.
- According to Section 5(2) of the Kerala Tourism Act, 2005 **the local authorities** (i.e. the Panchayat Raj Institutions and Urban Local Bodies) **shall act in accordance with the advice or direction given by the Tourism Committee/ proposed DAs in respect of any area comprised in a STZ, and shall intimate to the Committee/ proposed DAs such action as taken by it.** The Tourism Ordinance 2010 and the proposed Kerala Tourism Amendment Bill 2010 continues with the same model. Kerala has been a state that has privileged people's participation in policy making. It has been in the forefront of devolution of power to the LSGIs, including devolving development funds to the LSGIs. The "Kerala Vision Document 2025" developed by the Kerala Tourism Department specifically acknowledges that participation of local self government and NGOs are necessary to the process of tourism development in the state. The Kerala Tourism Act 2005 and the present Kerala Tourism Ordinance and Kerala Tourism Amendment Bill 2010 undermine these principles of public participation in tourism development.

Questioning the Ordinance route

Ordinances are expected to be promulgated in exceptional circumstances requiring urgent action.

According to **Article 213** of the Constitution of India the Governor of a state can promulgate Ordinances only under the following circumstances:

- **When the legislative assembly is not in session and**
- The Governor is satisfied that that circumstances exist which render it necessary for him to **take immediate action**

The circumstances in Kerala that required such urgent action are not evident, particularly given that the Kerala Assembly session was due to commence in a few days. In *D.C. Wadhwa v State of Bihar (1987) 1 SCC 378* the Supreme Court held that the exceptional power under Article 213 cannot be used as a substitute for the law making power of the State Legislature and excepting very rare cases where like for shortage of time the legislators could not convert an ordinance into an Act and continuance of the ordinance is necessary in the public interest, that an ordinance can be promulgated but not otherwise.

Given the sequence of events it seems like the push by the Government of Kerala to amend the Kerala Tourism Act 2005 through promulgation of ordinance is designed to exclude dialogue with people and their representatives and evade public scrutiny.

Effectiveness may win but democracy loses?

The Statement of Objects and Reasons provided by the government in the Tourism Amendment Bill 2010 states that: the Tourism Development Committee constituted under *Section 4* of the Kerala Tourism Act, 2005 'was found by the government to be not very effective to serve the object of conservation and preservation of different tourism zones.

Hence the Government intends to constitute tourism development authorities for one tourism zone or for different tourism zones with district level officers and people's representatives as members and to empower the authorities so constituted to formulate tourism schemes to implement them and check violations of the schemes by constructions within the areas of the scheme. Government also intends to appoint a special officer having power to supervise the implementation of the schemes and to get the schemes implemented with the assistance of the concerned local authorities.'

This argument or rationale needs to be examined carefully. If a body is made defunct or replaced simply because it has "proved to be not effective", it can set the trend of rule by authorities. How to make an extant body- the LSGIs respectively, more effective is not being examined with equal zeal.

If the Government has declared the Committee as ineffective (and the basis or criteria of such an assessment are not clear – in fact even the existence of the Committees has been not widely known !) where lies the assurance that formation of DAs will ensure higher effectiveness, one wonders.

In 2005 when the Kerala Tourism Act 2005 was enacted, the Government gave a similar rationale for that step. It was said that that the LSGIs in the state had failed in conserving and preserving the areas where tourism had flourished, thus, making it essential to have bodies that can effectively conserve and preserve the areas with tourism potential.

The state of Kerala has had a history of public policy that has focused on the building of social capital – through education, public health and people's participation processes. Such an investment in social capital, one would assume, would be a foundation for effective and vibrant participation of people in public bodies of governance and development and public good. The directions that the Kerala Tourism Act 2005 and its current avatar are taking aims to centralize administrative control and make increasingly redundant civil society involvement and influencing of political spaces and agendas. What is not being examined is given the benefit of immense social capital, what prevents efficiency or effectiveness. Surely it can't be democracy that is the obstruction and therefore needs to be sacrificed?

Note 1:

The Eleventh and Twelfth Schedule of the Constitution, outlines the matters to be devolved to the Panchayats and Municipalities respectively to enable them to function as institutions of self-government and perform the functions pertaining to planning, implementation and collection of taxes. The tourism industry uses resources, which fall under direct jurisdiction of either Panchayat Raj Institutions or Urban Local Bodies. The Kerala Panchayat Raj Act as per the constitutional mandate ensures that planning, management, control and regulation over these resources and civic amenities are under appropriate levels of local governance. Section 166, 172 and 173 of Kerala Panchayat Raj Act 1994 outlines the functions of Village Panchayat, Block Panchayat and District Panchayats, respectively which is in accordance with the Article 243 G and Eleventh Schedule of the Constitution.

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